



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8836 OF 2022

- 1] Ramesh Gopikishanji Malani
Age: 76 years, Occu. Medical Practitioner
R/o. "Shubham", Plot No.25,
N-3, CIDCO, Aurangabad
- 2] Vijay Gopikishanji Malani
Since deceased through Legal Representatives
- 2A] Alka Vijay Malani
Age: 68 years, Occu. Household
R/o. Gopichanda Complex, Jalna Road,
Aurangabad
- 2B] Punil Vijay Malani
Age: 36 years, Occu. Business
R/o. Gopichanda Complex, Jalna Road,
Aurangabad
- 2C] Bhakti Nitin Mundada
Age: 42 years, Occu. Household,
R/o. Pune
Through Registered Power of Attorney Holder
Punil Vijay Malani
Age: 36 years, Occu. Household
R/o Gopichanda Complex, Jalna Road,
Aurangabad
- 2D] Pooja Ajay Lahoti
Age: 39 years, Occu. Medical Practitioner
R/o. Hyderabad.
Through Registered Power of Attorney Holder
Punit Vijay Malani
Age: 36 years, Occu. Household
R/o. Gopichanda Complex, Jalna Road,
Aurangabad

- 3] Sunil Gopikishanji Malani
Age: 63 years, Occu. Business,
R/o. Jadhavmandi, Municipal No.4-5-11.
Aurangabad

... Petitioners

VERSUS

- 1] The State of Maharashtra
Urban Development Department
Through its Principal Secretary,
Mantralaya, Mumbai
- 2] Aurangabad Municipal Corporation
Aurangabad
Through its Commissioner
- 3] The Additional Director
Town Planning Department,
Aurangabad Division, Aurangabad
M.B.C. Tower, 2nd Floor,
Near Baba Petrol Pump,
Adalat Road, Aurangabad
- 4] The Assistant Director,
Town Planning, Aurangabad
Mondha Naka, City Pride Building,
1st Floor, Jalna Road,
Aurangabad – 431 001.

... Respondents

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Mr. A. N. Sikchi, Advocate for Petitioners
Mr. M. M. Nerlikar, AGP for Respondent Nos. 1, 3 and 4
Mr. A. R. Vaidya, Advocate for Respondent No.2

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

DATE : 01.07.2024

Oral Judgment (Per: Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioners have put forth prayer clauses (A) and (B) as under:-

“[A] The Hon’ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ and thereby declare that the property bearing Municipal No.4-5-11, CTS No.7913 situated at Jadhav Mandi Aurangabad (particularly described in paragraph No.2), is free from encumbrance of reservation as reserved in final development plan of Aurangabad sanctioned by the Government under Section 31(1) of the MRTP Act, 1966 vide notification No.TPS/3001/1566/CR-27/2001/UD-30 dated 17.08.2002 as site No.46 vegetable market and shopping complex.

[B] The Hon’ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ and thereby further direct the Respondent No.1 to notify the lapse of reservation of the property bearing Municipal No.4-5-11, CTS No.7913 situated at Jadhav Mandi Aurangabad (particularly described in paragraph No.2), by an order published in Official Gazette, in pursuant to section 127(2) of the Maharashtra Regional Town Planning Act, 1966.”

3. In such matters, the dates and sequence of events are relevant. The same are as under:-

- (a) The property at issue is Municipal No.4-5-11, CTS No.7913, situated at Jadhav Mandi, Aurangabad.
- (b) The property was reserved in 1969 for a vegetable market and for 20 feet as well as 40 feet wide roads, under the Development Plan of Aurangabad. The reservation was shown as site No.48.
- (c) On 17.08.2002, the Development Plan of Aurangabad city was revised, whereby, the property at issue was reserved, for the vegetable market and shopping complex indicated as site No.46, by the Government under Section 31(1) of the M.R.T.P. Act, 1966.
- (d) The Petitioners issued the purchase notice under Section 127(1) of the M.R.T.P. Act, dated 16.07.2018, which was served on the Municipal Commissioner. A further, reminder dated 14.08.2018, was also served.

4. The learned Advocate representing the Municipal Corporation submits that a communication dated 06.05.2021, was forwarded to the District Collector praying for a proposal to be prepared and at the same time expressing the willingness of the Corporation to pay the compensation amount. However, from the records and the affidavit-in-reply, the learned Advocate is unable to point out as to whether effective steps were taken, as are recognized

under the law laid down in ***M/s.Girnar Traders Vs. State of Maharashtra and others (2007) 7 SCC 555***. He, however, submits that all the owners of the property have not given the purchase notice.

5. The Petitioner relies upon the observations of this Court in paragraph 15 of the judgment dated 03.04.2018, delivered in ***Writ Petition No. 8066 of 2009 (Keshav Manikrao Bagal Vs. The State of Maharashtra and others)***. Paragraph 15 reads as under:-

“15. One more objection was raised by the learned Counsel for the respondents that notice to respondent Nos.4 and 5 was served by the petitioner only and not by other co-owners. However, a bare glance of Section 127(1) of M.R.T.P Act makes it clear that the owner or person interested in the land may serve notice on Planning Authority or Development Authority as contemplated under that provision. Thus, the service of notice by every co-owner giving intimation regarding lapsing of reservation is not at all necessary.”

6. The Petitioners also rely upon the judgment delivered by this Court at the Principal Seat in ***Jagdish Mallikarjun Patil and others Vs. The State of Maharashtra and others – MANU/MH/1684/2024***. A specific reference is made to paragraph Nos. 10, 11 and 12, which read as under:-

“10. In support of her contention, she relied upon the judgments of the full Bench of this Court in the case of Madanlal Zumberlal Nahar v Chief Officer, Municipal Council Beed² and Jeevan Mallappa Tonemare v Chief Officer, Kankavali Nagar Panchayat.³ These judgments held that a valid notice would necessarily require to be accompanied by document showing title or interest in the land under reservation. Then drawing our attention to the correspondence seeking title documents she submitted that the Petitioners had failed to give those relevant documents and thus the notice was not a valid notice. She also contended that all the owners of the property did not give the purchase notice. She therefore contended that the purchase notice under Section 127 of the MRTP Act that is an essential prerequisite for lapsing of the reservation was defective. Thus, the Petition must necessarily fail.

11. In rejoinder, the Petitioners asserted that they had submitted the documents that were sought for by the Respondent Corporation and in spite of which the Respondent had failed to take steps as required under the MRTP Act. The Petitioners have annexed the property card that was submitted to the Respondents being the document of title at page 16 of the Petition. In the last row and 2nd last column, the name of the Petitioners is evident as the owner. The purchase notice also has categorically stated that the Petitioner no 1 is the co-owner of the said property and the purchase notice was issued on behalf of all the owners. The Respondent Corporation has not denied the assertion that the property card was sent by the Petitioners in their reply. The Respondents have also not pointed out any inconsistency with regard to any documents submitted or to the claim of the Petitioner no 1 being a co-owner.

12. Whilst testing the Petitioners' case on the alternate submission, namely, assuming that the property stood reserved, we are satisfied that the purchase notice was valid. The Petitioners have stated on oath that they have sent the documents to the Respondent No. 2. The property card evinces the interest of the Petitioner no 1 as well as his co-ownership right. The essential ingredients or requisitions of the purchase notice have therefore been complied with by the Petitioner no 1, as it shows not only the title but also his co-ownership rights and interest in the Petitioners land."

7. The learned AGP has vehemently opposed this Petition on the ground that the District Collector had reverted to the Municipal Commissioner/Administrator, vide communication dated 19.06.2021, informing the latter that the communication forwarded by the Administrator, did not contain all the details and the relevant documents. He, therefore, submits that the office of the District Collector had responded to the communication of the Administrator of the Municipal Corporation. Thereafter, there has been no response from the Corporation.

8. Considering the above and taking into account the view of this Court in *Keshav Manikrao Bagal (supra)* and *Jagdish Mallikarjun Patil (supra)*, we hold that when some of the owners have issued the purchase notice, merely because all the owners have not signed upon the said notice, would not render the notice defective.

9. As such, **this Writ Petition is allowed in terms of prayer clauses (A) and (B).** The Corporation shall communicate the lapsing of the reservation to Respondent No.1, within 30 days. Respondent No.1 would issue a notification under Section 127(2) of the M.R.T.P Act, within 90 days thereafter.

10. **Rule is made absolute in the above terms.**

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

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